

Rights, forests and climate briefing series – March 2010

Consultation with indigenous peoples and others affected by REDD initiatives in the DRC: An example of best practice?

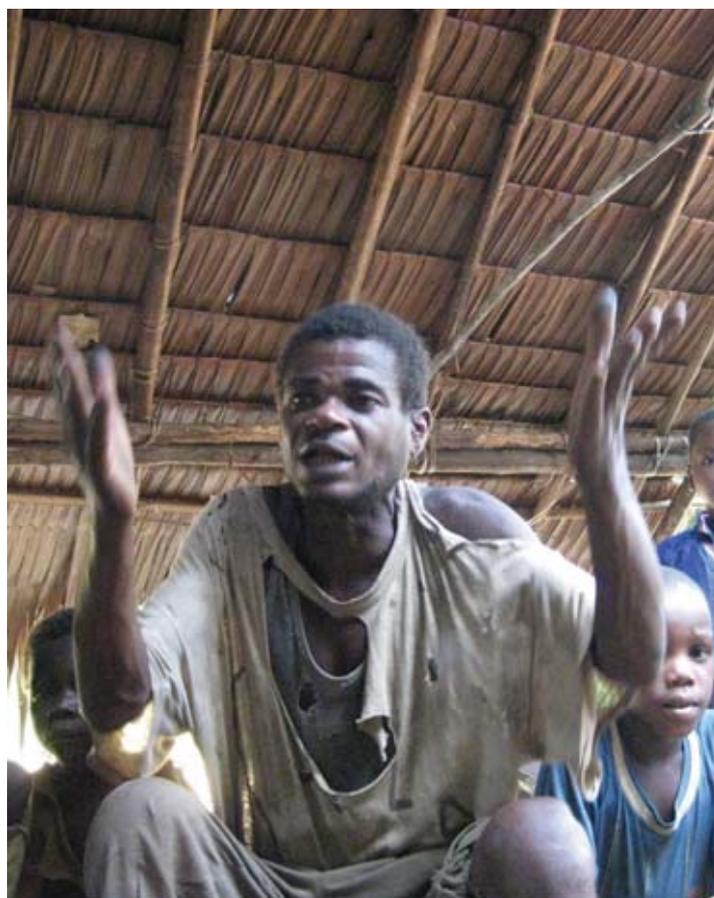
The Democratic Republic of Congo is coming to the end of the first year of implementing REDD readiness initiatives and has recently submitted its Readiness Preparation Proposal (R-PP) to the World Bank's Forest Carbon Partnership Facility (FCPF). During that phase it must succeed in adequately preparing itself so that it is possible for the joint UN/FCPF national programme to enter its second phase, that of implementation. The National Joint Programme document is clear: the success of the activities relies on consultation with, and the effective participation of, forest communities, indigenous peoples and civil society. After several months of preparatory activities, is the DRC ready? And has the DRC ensured effective participation by indigenous peoples and others in decision making, and followed best practice in this respect, as a UN agency is now claiming?

Introduction

Over 60% of the tropical rainforests in the Congo Basin fall within the Democratic Republic of Congo (DRC), where more forests remain intact than in all the other surrounding countries put together. The forests in the DRC cover an area of over 1 million km² of which approximately half are rainforests. Most are accessible to logging and other extractive industries. A large part of the population depends directly on these forests, which are mega-diverse and play a crucial role in protecting the climate.

The DRC was chosen by the Oversight Board of the United Nations Programme for Reducing Emissions from Deforestation and Forest Degradation (UN-REDD) as one of the pilot countries to be prepared for reducing emissions from deforestation and forest degradation (REDD). Since June 2009, and for a scheduled period of one year, efforts have been focused on successfully completing the 'readiness phase', during which the DRC must prepare itself for implementing the joint programme. The Policy Board of the UN-REDD Programme has allocated significant funds (USD 1.9 million)¹ to implement this first phase of the National Joint Programme (NJP),² which involves both UN-REDD and the FCPE.

Batwa community meeting near Bikoro, Equateur Province, October 2009. In DRC, most communities remain excluded and uninformed about forest policies and management, as well as REDD plans for their forests.



The UN-REDD Programme has cited the case of the DRC as an example of best practice with regard to consultation and participation.³ However, implementing a strategy for consulting the population of the DRC, which is large and spread across a vast area in which the means of communication are limited, remains a huge challenge. Discussions and decisions concerning REDD are taking place extremely quickly and a large part of the population has no access to information about the REDD initiatives. This risks not only jeopardising the long-term effectiveness of any measures taken to combat deforestation and forest degradation, but such measures have also, so far, been implemented without respecting the rights of members of forest communities, indigenous peoples and civil society to informed and effective participation in decisions that may affect their rights or well-being.

How the joint UN-REDD/FCPF programme began

The R-PIN (Readiness Preparation Idea Note) for the DRC was drafted by a group of national and international experts in March 2008. It was submitted by the DRC Government to the FCPF in May 2008. The R-PIN was approved by the FCPF and, subsequently, the UN-REDD also decided to support the REDD-related plans in the DRC. In January 2009, the DRC hosted the first joint scoping mission during which an action plan was drawn up. Elaboration of this plan began in June 2009. Funding has been granted for the ambitious goal of helping all rights-holders and stakeholders to get ready. To achieve this, a series of studies has been carried out and consultations are taking place.⁴ In fact, the NJP adopted in June 2009 requires the engagement of all ‘stakeholders’ in forest management in the DRC, namely the government, local communities and indigenous peoples, civil society, researchers and the private sector as well as bilateral partners and the donors funding it.

Which agencies are responsible for implementing the joint programme?

Three agencies or bodies are responsible for implementing the programme: the REDD National Committee (responsible for decision-making and defining policy), the Inter-Ministerial Committee (responsible for carrying out National Committee decisions) and the National Coordination team (responsible for the day-to-day management). Additionally, two important grant agreements relating to the REDD process have been signed with the World Bank and the UN and these fund the work to be done during the first or ‘readiness’ phase. The World Bank and the UN have also earmarked funds to cover the work to be done in subsequent phases, such as more studies, activities connected with the R-PP and investment and implementation issues. The World Bank and three other UN bodies (the UN Development Programme, UN Environment Programme and UN Food and Agriculture Organisation)⁵ are assisting with ‘readiness’ activities as set out in the programme of work adopted by the January 2009 mission.

Acronyms	
ACHPR	African Charter on Human and Peoples’ Rights
CBD	Convention on Biological Diversity
CERD	Committee on the Elimination of Racial Discrimination
DRC	Democratic Republic of Congo
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility (of the World Bank)
FPIC	Free, prior and informed consent
ICCPR	International Covenant on Civil and Political Rights
MRV	Monitoring, Reporting and Verification System
NJP	National Joint Programme
OP 4.10	Operational Policy 4.10 (of the World Bank)
REDD	Reducing Emissions from Deforestation and forest Degradation
R-PIN	Readiness Preparation Idea Note
R-PP	Readiness Preparation Proposal
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC COP	United Nations Framework Convention on Climate Change Conference of the Parties
UN-REDD	United Nations Programme for Reducing Emissions from Deforestation and forest Degradation

**Status of implementation:
will the DRC be ready?**

By the end of February 2010, some stages of the initial preparatory phase had been completed. The National Coordination team was in place, contact had been initiated with several groups and stakeholders, information activities had been carried out, and studies of the causes of deforestation had begun. The legal decree establishing the monitoring structure, adopted in November 2009, mandates the National Coordination team to *'encourage and ensure a participatory approach to the REDD process through the involvement of, and consultation with, the stakeholders'*.⁶ However, involvement of all the 'stakeholders' is not guaranteed. According to reports received from civil society, most local communities and indigenous peoples have not even been informed about the process and lack knowledge about REDD and its implications.

There are a number of challenges in the offing and many other aspects have yet to be carried out before the 'readiness' phase is successfully completed; in other words, before it can be said that the DRC is 'ready' to implement actual REDD projects. Among other things, the task of ensuring that the two agencies involved in the joint programme are acting consistently requires significant administrative effort. The National Coordination team would rather have only one set of agency standards to deal with and is striving to achieve this end.⁷ Furthermore, in October 2009, the National REDD Coordinator explained that in the next stage a study will take place on income distribution derived from natural resources. This very important stage must be based on genuine consultation with all the stakeholders and rights-holders, including local communities, indigenous peoples and civil society. Lastly, another major item on the agenda is the design of a monitoring, reporting and verification system (MRV) – an issue in which all the stakeholders and rights-holders must also be involved. Despite these outstanding activities, the government may well argue that the DRC is ready to go ahead with the next phases because of the promising financial implications of the REDD programme.

Box 1 Some of the stages in the UN-REDD Programme

2007	UNFCCC COP 13 held in Bali, Indonesia, where the idea of the REDD Programme was launched.
March–May 2008	Drafting of the R-PIN for the DRC by a group of national and international experts and its submission by the DRC Government for acceptance by the World Bank's Forest Carbon Partnership Facility.
August 2008	Accra Climate Change Talks resulting in joint positions by indigenous peoples with regard to the identification of principles and the approach to financing; Declaration by the Forum of Indigenous Peoples on Climate Change; Declaration by NGOs from the countries of the Congo Basin on forests and climate change.
December 2008	UNFCCC COP 14 held in Poznan, Poland, where there was criticism of the lack of consideration given to indigenous peoples in discussions about implementing REDD measures.
January 2009	First UN-REDD/FCPF mission which established the founding principles relating to the engagement of indigenous peoples and civil society.
May 2009	Second UN-REDD/FCPF mission to the DRC. This mission did not have the same level of civil society engagement as the January 2009 mission. Its main focus was on inter-ministerial management, which caused dissatisfaction among civil society.
June 2009–May 2010	First phase of the UN-REDD DR Congo Quick Start Programme, intended to establish a Readiness Plan (R-Plan) and to inform and train the stakeholders so that they can participate actively in the REDD process. The 2nd phase (June 2010–May 2012) is also to be planned during that period.
June 2009	Creation of a civil society Climate-REDD working group which has become the main interlocutor for the government, the National REDD Coordination team and the UN-REDD and FCPF programmes.
August 2009	Launching Workshop in Kinshasa to inform, educate and communicate about REDD.
October 2009	Third UN-REDD/FCPF mission to the DRC during which the REDD decree setting up the National Coordination team was adopted and the Inter-Ministerial and National REDD Committees (one-third of which comprise civil society and the indigenous populations) were set up.
December 2009	Conference of Parties to the UNFCCC, COP 15, held in Copenhagen, Denmark, and intended to be a decisive stage for the future of REDD initiatives.
January 2010	The draft R-PP is made available to the stakeholders.
February–March 2010	The DRC plans to submit its R-PP for REDD to the FCPF and UN-REDD.
June 2010 – May 2012	Second scheduled phase of the REDD programme in the DRC.



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A good example of civil society engagement?

UN-REDD presents the engagement of indigenous peoples and civil society in DRC in REDD processes as a good example but, nonetheless, states that implementation of the right to free, prior and informed consent (FPIC) is still at the 'definition stage'.⁸ While the civil society working group said in October 2009 that it had sufficient opportunity to state its views, it said that it was seeking to increase its involvement in work with the National Coordination team. The working group expressed particular concern about the delay in setting up consultations.⁹ In none of the documentation is there reference to consultation with, or engagement of, local communities or indigenous peoples, and in the case of indigenous peoples, the failure to adequately ensure that FPIC is part of the process to date is a serious defect.

Indigenous peoples at particular risk

Just like the effects of climate change themselves, measures developed to mitigate or adapt to climate change – such as the REDD initiatives – could particularly affect indigenous peoples. If national REDD plans are poorly designed, these peoples are likely to have their human rights violated because they inhabit the lands and forests in the regions targeted by

these programmes and use the resources found within them. In addition, tropical forests – like arid regions, the Arctic, small islands and high-altitude eco-systems – are among the regions that are expected to experience devastating effects as a result of climate change.

Moreover, indigenous peoples have been historically marginalised and continue to be so. They are still struggling for the recognition and protection of their rights to own and control their traditionally owned lands, territories and resources and to ensure that they can transmit their cultures and heritage to future generations. Their customary law and institutions are often not respected by the governments of the countries they live in and prevailing modes of political participation are generally not suited to their social and cultural characteristics. The denial of land tenure rights to indigenous peoples is a common denominator across the Congo Basin region.¹⁰ That is why, in the context of implementing REDD initiatives, if indigenous peoples and their rights continue to be marginalised and disregarded, they are also likely to continue to be dispossessed of their lands, thereby provoking significant conflicts.

The theoretical framework: good intentions

In theory, the operational framework of REDD initiatives includes policies that favour the effective participation of indigenous and other forest peoples. The FCPF Charter recognises that the rights of indigenous peoples and forest dwellers under national and applicable international law must be respected. The draft operational guide on the engagement of indigenous peoples in the UN-REDD programme¹¹ also incorporates the rights of indigenous peoples and is based mainly on the *United Nations Development Group Guidelines on Indigenous Peoples' Issues*, issued in February 2008. Furthermore, the World Bank has adopted 'safeguard policies' with regard to indigenous peoples, including Operational Policy 4.10 (OP 4.10) which requires that indigenous peoples participate in decision making and that there be 'broad community support' for a project to receive World Bank financing. While it is not entirely clear how the Bank understands and implements this 'broad community support' standard, if the majority of the community or indigenous people are opposed to the project, in principle, the Bank is enjoined by OP 4.10 from further involvement with the project. Additionally, consultation processes under OP 4.10 must be culturally appropriate, conducted in good faith with the objective of reaching an agreement, and genuinely involve the informed participation of indigenous peoples.

As for the DRC Government, it is a party to international treaties that guarantee the rights of indigenous peoples, such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination, the Convention on Biological Diversity and the African Charter on Human and Peoples' Rights. All these instruments and the jurisprudence developed by their

Box 2 The DRC Readiness Preparation Proposal,¹⁷ March 2010: a brief analysis

The DRC Readiness Preparation Proposal (R-PP) is to be submitted to the FCPF for consideration at the Participants meeting scheduled for March 2010 in Gabon.

• Monitoring, Reporting and Verification

The R-PP explicitly refers to the need to identify MRV systems that would go beyond the exclusive focus on carbon, to encompass governance, economic, environmental and socio-cultural management. However, participation of civil society and indigenous peoples seems to be limited to certain aspects of monitoring, rather than in all stages of REDD design while verification seems to be recognised as the task of international NGOs asked to carry out independent monitoring.

• Problems with proposed timeframe

The timeframe proposed under the R-PP for carrying out governance and forest reforms, capacity building and other key requirements is the end of 2012. However, this deadline seems too short to ensure proper and effective action and outcomes.

• In identifying drivers of deforestation, R-PP condones logging

The R-PP lists as key drivers of deforestation subsistence agriculture and 'shifting cultivation', while stating that industrial logging and mining have 'relatively little' impact on deforestation. Furthermore, reduction of logging and mining is not contemplated as an action to reduce greenhouse gas emissions because of their economic convenience. Instead, the DRC government is planning to relaunch the logging sector by granting 10 million hectares of new logging concessions. The task of identifying drivers of deforestation was carried out without public participation or ground truthing.

• Vague treatment of land tenure and land rights

The description of land tenure and the land rights situation is weak. The relevance of the issue is recognised but no specific action is suggested to address it, other than carrying out a study.

• Unclear link between the proposed Strategic Environmental and Social Assessment (SESA) and World Bank safeguards

The R-PP does not clarify whether the proposed SESA is subject to World Bank safeguards or instead is to be applied in substitution, or under a loose regime of compliance. The Bank's proposal to deal with due diligence by developing a Strategic Environmental and Social Assessment (SESA) for DRC readiness, risks undermining FCPF Charter requirements. These include the stipulation that all FCPF operations must comply with the World Bank's Operational Policies and the DRC's international obligations to uphold the rights of indigenous peoples and local communities.

• Omission of operational language on UNDRIP; free, prior and informed consent; and indigenous peoples' rights

The R-PP contains no operational indication of how to implement free, prior and informed consent, nor a specific reference to UNDRIP. Instead it contains the Terms of Reference of a 'Study on "transversal" legal reform to support the implementation of REDD' in which reference is made to UNDRIP and FPIC, as well as to the indigenous peoples' rights to self-determination, land tenure, and resource rights. It also makes reference to protection of traditional forest uses as factors to be taken into account when assessing the level of integration of international instruments and norms. Furthermore, the lack of recognition of indigenous peoples' rights, as well as the lack of legal recognition of customary land rights and the necessity for comprehensive land reform, are supposed to be addressed in the aforementioned legal study.

supervisory bodies have repeatedly affirmed the rights of indigenous peoples to, *inter alia*, ownership and control of traditionally owned lands, territories and resources, self-determination and benefit sharing. These obligations and the associated rights have yet to be adequately addressed in REDD in DRC. While these international obligations have not yet received the attention that they deserve and demand, the DRC Environment Minister has also said that by changing attitudes and adopting alternative solutions, emissions resulting from deforestation and forest degradation will be reduced. He also confirmed that it is necessary to consult with, convey correct information to, and build the capacities of all 'stakeholders'.¹² This, however, falls far short of full compliance with the DRC's human rights obligations. The African Commission on Human and Peoples' Rights, for instance, held in 2010 that '*In terms of consultation, the threshold is especially stringent in favour of indigenous peoples, as it also requires that consent be accorded.*'¹³

Difficulties in practice

In practice, however, since the DRC committed itself to developing a REDD programme, the vast majority of indigenous peoples in the DRC, as rights-holders, have yet to be even informed about the REDD process. This very worrying situation is similar to other experiences that have occurred with regard to forests and climate change. For instance, an early analysis of the DRC R-PIN showed that the difficult task of securing a share of the benefits for the poorer sections of the population had been left largely to forestry companies.¹⁴ Also, during its reform of the forestry sector, the DRC government chose to ignore its own laws as well as the recommendations resulting from its legal review of 156 logging titles. The Inter-Ministerial Commission

had recommended that 46 of the 156 titles be converted into concession contracts but the logging companies appealed and the number was increased to 65. Furthermore, 80% of these logging permits were granted during a moratorium on the allocation of logging concessions and were manifestly illegal.¹⁵ There is, therefore, reason to wonder whether the same scenario is again being reproduced, to the detriment of the rights of forest communities and indigenous peoples. The most recent REDD R-PP submitted by the DRC to the World Bank does not adequately address these rights issues: this proposal requires major revision if rights are to be properly treated in the readiness phase in the DRC (see Box 2).

The decree establishing the structure for implementing the REDD programme which was adopted in November 2009 states that the National Coordination team is responsible for encouraging and ensuring the engagement of all the 'stakeholders'. However, no mention is made of the rights of forest communities or indigenous peoples. Furthermore, as the NJP acknowledges, the land situation in the DRC is complicated and the land rights of forest communities and indigenous peoples must be clarified if the REDD initiatives are to be successfully implemented. Nevertheless, and despite recommendations made by the CERD in 2007 calling for the protection of indigenous peoples' rights in forests and forestry-related initiatives,¹⁶ there has been no attempt to account for those rights in law to date.

Participation must be effective, otherwise the DRC is not ready

In March 2010, the DRC will present its R-PP to the FCPF and describe the progress made during the readiness phase so far. While the need to secure the effective participation of forest communities, civil society and indigenous peoples has been clearly acknowledged, and there is some good will to do so, there is negligible evidence that this good will has been translated into action.

One of the main problems is the speed with which the programme is being implemented. The immense size of the country and the need to travel by plane between the different urban areas, combined with the extremely technical nature of the discussions and the excessive amounts of information, make it impossible for an adequate and effective participation process in the short amount of time allocated.

And yet the long-term success of operations relies on securing the effective participation of indigenous peoples, forest-dependent populations, and others. As noted above, effective participation includes FPIC in the case of indigenous peoples. REDD initiatives may help secure forests and the carbon therein as an effective part of combating climate change, but only if they are implemented while respecting indigenous peoples' rights.¹⁸ The experience with protected areas across the world strongly supports this conclusion, demonstrating that protected areas are largely an ineffective method of conservation in cases where indigenous peoples' rights are not protected.¹⁹

Notes

- 1 *2009 Year in Review*, FAO, UNDP and UNEP, March 2010.
- 2 *UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries Joint Programme Document: Democratic Republic of Congo*, DRC Ministry for the Environment, UNEP, FAO and UNDP, 2009
- 3 *Engaging Civil Society in REDD: Best Practice in the Democratic Republic of Congo*, UN-REDD Programme, November 2009
- 4 José Endundu Bononge (Minister for the Environment, Nature Conservation and Tourism/DRC), opening speech given at the workshop to launch REDD in the DRC, Hôtel Sultani, 21 August 2009, pp. 2 and 4
- 5 United Nations Development Programme, United Nations Environment Programme and the United Nations Food and Agriculture Organization
- 6 Article 10 of Decree No 09/40 of 26/11/09 on the creation, composition and organisation of the structure for implementing the process for reducing emissions from deforestation and forest degradation, acronym REDD.
- 7 Bruno Guay (Technical Assistant), 2009-2010 Work Programme, REDD Launching Workshop, Kinshasa, 21-22 August 2009
- 8 *Engaging Civil Society in REDD: Best Practice in the Democratic Republic of Congo*, UN-REDD Programme, November 2009
- 9 Press release, *Position du groupe de travail Climat REDD de la société civile de la RDC sur la mission UN-REDD et FCPF en République Démocratique du Congo*, October 2009.
- 10 See *Land rights and the forest peoples of Africa – Historical, legal and anthropological perspectives*, Forest Peoples Programme, 2009, available at: http://www.forestpeoples.org/documents/africa/land_rights_series_base.shtml
- 11 *Operational Guidance on the Engagement of Indigenous Peoples and Other Forest Dependent Communities*, UN-REDD, Working document, 20 April 2009. This guide is currently being brought into line with the FCPF guide.
- 12 José Endundu, p.5
- 13 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, February 2010, at paragraph 226, available at <http://www.minorityrights.org/9587/press-releases/landmark-decision-rules-kenyas-removal-of-indigenous-people-from-ancestral-land-illegal.html>
- 14 See, among others, *A Review of 25 Readiness Plan Idea Notes from the World Bank Forest Carbon Partnership Facility*, working paper, World Resource Institute, February 2009
- 15 *Arrêté n° CAB/MIN/AFF.-E.T/194/MAS/02 du 14 mai 2002 portant suspension de l'octroi des allocations foncières*; see Lionel Diss and Nikki Reisch, *Avoidable Deforestation, Forest Sector Reforms and REDD in the Democratic Republic of Congo*, Rainforest Foundation, April 2009.
- 16 CERD/C/COD/CO/15, 17 August 2007
- 17 *Democratic Republic of Congo. Readiness Plan for REDD. 2010-2012. R-PPDraft v.2b*. March 2nd, 2010 http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Mar2010/RDC_R-PP_version_2_March_2010_English.pdf
- 18 For a detailed application of human rights jurisprudence to REDD, see *Indigenous Peoples' Rights and Reduced Emissions from Reduced Deforestation and Forest Degradation: The Case of the Saramaka People v. Suriname*; Forest Peoples Programme, March 2009. Available at: http://www.forestpeoples.org/documents/ifi_igo/suriname_saramaka_and_redd_judgment_mar09_eng.pdf
- 19 See among others, C. Sobrevila, *The Role of Indigenous Peoples in Biodiversity Conservation: the natural but often forgotten partners*. World Bank, Washington, DC, 2008; and *Conservation and Indigenous Peoples: Assessing Progress Since Durban*, Forest Peoples Programme, October 2008, Available at: http://www.forestpeoples.org/documents/conservation/wcc_conservation_and_ips_interim_rep_sept08_eng.pdf

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